NO. 86-545

Supreme Court, U.S.
FILED
NOV 21 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

RICHARD A. DUNCAN, ET AL,

PETITIONERS

VS.

VILLAGE OF MIDDLEFIELD, OHIO

RESPONDENT

REPLY BRIEF

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF OHIO

RICHARD A. DUNCAN
PRO SE
14827 N. STATE AVE.
MIDDLEFIELD, OHIO
44062
(216) 632-5993

NO. 86-545

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

RICHARD A. DUNCAN, ET. AL.

Petitioners

vs.

VILLAGE OF MIDDLEFIELD, OHIO

Respondent

On Petition For Writ Of Certiorari To The Supreme Court Of Ohio

REPLY BRIEF

The Respondent, Village of Middlefield, Ohio, setsforth in its Memorandum Opposing Certiorari two points as to why this Court should not grant Certiorari in this case. For the reasons as discussed below, such points have no merit.

First of all, the Petitioners' (the Duncans) major federal question raised or setup here in this Court (due process) appears

consistently in the record of this case. The major question to be determined throughout this case was whether the Middlefield Zoning Board of Appeals' decision of denying a variance was "unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable and probative evidence on the whole record." (see; the Common Pleas Court ruling at page A-27 and A-28 of the Petition; the Court of Appeals ruling at page A-23 of the Petition; the Ohio Supreme Courts ruling at page A-13 of the Petition.)

It needs no elaboration that any governmental decision (and a Courts affirmation of such decision) which is arbitrary and unsupported by a required degree of evidence clearly represents a "purposeless restraint" and violates constitutional guaranteed due process. Consequently, because at every stage of these judicial proceedings the Duncans have alleged and argued that such Board of Appeals decision was arbitrary and

unsupported by the preponderance of reliable, probative and substantial evidence, it is therefore clear that such federal claims have been raised in the Duncans arguments in the Courts below (see; First Assignment of Error at page A-1 of Memorandum Opposing Certiorari and Proposition of Law No. 5 at page A-4 of Memorandum Opposing Certiorari).

Furthermore, it is clear that the Duncans discrimination claim based on the XIV amendment of the Constitution raised here could not have been raised in the state courts because it is specifically directed at the final ruling of the Ohio Supreme Court. (similarly, the Duncans' due process claim against the Ohio Supreme Courts ruling could not have been raised prior to their decision).

Consequently, it is clear that the Duncans have committed no errors in failing to timely raise federal claims.

Even assuming that this Court finds that the federal questions were not timely and

properly raised before the state courts, it is obvious that justice cannot allow this Court to permit such to act as a bar to accepting jurisdiction of this case due to the improper procedures and errors as committed by the zoning board and the lower state courts (failing to properly apply the "practical difficulty test") which has resulted in, as of this time, depriving the Duncans of even an appellate review of the merits of their case (see; page 3-13 of Petition, which explains how the Duncans finally convinced the courts of Ohio at the highest level, of the proper body of law to apply and how to apply its principles). The Duncans now merely request a judicial review of such decision, which will clearly reveal the flagrant errors of the Ohio Supreme Court, in particular the Courts giving effect to private biases ("unsubstantiated viewpoints of neighbors") as setforth recently by this Court in Cleburne v. Cleburne Living Center (NO. 84-468). See Petition at pages 17-18.

Secondly, the time requirements for filing the Duncans' petition were clearly satisfied. When the Duncans received by U.S. mail the order of the Ohio Supreme Court denying rehearing (see A-35 of Petition) on approximately July 18, 1986, I telephoned this Court and spoke to Edward L. Turner, Assistant Clerk, and asked him whether this ruling would extend the time for filing the petition until October 16, 1986 (90 days from the July 16th, 1986 entry date). He informed me to check with the Ohio Supreme Court to see if the Motion for Leave to file was granted.

I called such court and spoke to Adrian Redd (614-466-3456) and he informed me, after checking with his superior, that the court "obviously accepted the motion for leave to file such out of time as they made a ruling on the rehearing."

At 2:00 P.M. that day, I again called Mr. Turner in regards to talking to the clerk at the Ohio Supreme Court and he stated that

"its good enough for us" and that we would have 90 days from July 16, 1986 to send in our Petition. It is undisputed that such Petition was filed with this Court well before October 16, 1986, and is thus timely.

In summation, it is clear that the respondents two points are not well-taken.

Respectfully submitted,

Richard A. Duncan

RICHARD A. DUNCAN
14827 North State Ave.
Middlefield, Ohio
44062

Petitioner
PRO SE

(216) 632-5993